

RD AN No. 4515 (1980-D)
June 11, 2010

TO: State Directors
Rural Development

ATTENTION: Rural Housing Program Directors,
Guaranteed Rural Housing Specialists,
Area Directors and Area Specialists

FROM: Tammye Treviño (*Signed by Tammye Trevino*)
Administrator
Housing and Community Facilities Programs

SUBJECT: Single Family Housing Guaranteed Loan Program
Loss Claim and Future Recovery Processing

PURPOSE/INTENDED OUTCOME:

The purpose of this Administrative Notice (AN) is to provide guidance on loss claim and recovery remittance procedures.

COMPARISON WITH PREVIOUS AN:

This AN replaces RD AN No. 4422 (1980-D), dated March 26, 2009, which expired on March 31, 2010.

EXPIRATION DATE:
June 30, 2011

FILING INSTRUCTIONS:
Preceding RD Instruction 1980-D

BACKGROUND:

As of December 31, 2006, the Rural Development staff located at the Centralized Servicing Center (CSC) in St. Louis, Missouri, reviewed all loss claims and supporting documentation to determine whether the lender/servicer has performed an expeditious liquidation and that claimed expenses are reasonable and customary. Any reference to "Agency" can be interpreted to be the CSC and may include other Agency staff who may be involved in the claim payment process.

The basic loss claim calculation is the total debt owed to the lender/servicer less the security property sale proceeds. The total debt includes unpaid principal, authorized protective advances, interest accrued through the settlement date, foreclosure expenses, and real estate owned (REO) management and resale expenses. In order to have a loss claim based on actual REO expenses and sale proceeds, REO must be sold within six months of the acquisition date.

A loss claim on unsold REO is based on estimated net sale proceeds, using an estimated sale price and estimated REO expenses. For a claim calculation on unsold REO, the estimated sale price is based on a third-party liquidation value appraisal obtained by the Agency. A liquidation value is used because it takes into consideration the market pressures on a distressed property. This value is multiplied by a cost factor to estimate REO expenses. The cost factor, developed and updated periodically by the Veterans Administration (VA), is based on an average of VA acquired property operating expenses, selling expenses, and administrative expenses. The factor also takes into consideration the cost of repairs to bring the property to minimum property standards. For example, a loss claim based on an estimated sale price of \$76,500, multiplied by the current factor of 11.87 percent, reimburses the lender \$9,080.55, for estimated REO property management and disposition expenses.

Future recovery is owed when the actual sales price of the REO sold exceeds the estimated sales price in which the claim was based. Future recovery represents the difference between the estimate and actual sale price and is shared proportionately, based upon the payment of the loss claim, with the Agency and lender/servicer as outlined in RD Instruction 1980.377. Lender/servicers will provide payment of future recovery within 30 days of notification of future recovery due. Future recovery remains due for six years from notification of the demand from the Agency. Failure to provide payment to the Agency could result in offset of future loss claim payments.

Additional recovery is owed when any of the following situations occur: collection of a deficiency judgment; reimbursement of insurance premiums or property taxes; or, hazard insurance claim collections. Additional recovery may also be due under other situations as determined by the Agency.

IMPLEMENTATION RESPONSIBILITIES:

Automated Loss Claim/Future Recovery and/or Additional Recovery Processing Tools

The following is available to all lenders to assist in submitting loss claims, future/additional recovery:

Exhibit A, Single Family Housing Guaranteed Loan Program - *Loss Claim, Future, and Additional Recovery User Guide, Version 4.1 (User Guide)*, provides detailed assistance in using the above Exhibits along with a glossary of terms

- Exhibit B, USDA Rural Development - Single Family Housing Guaranteed Loan Program - *Loss Claim Checklist*, is provided to assist lenders in submitting all required information to prepare a loss claim
- Exhibit C, USDA Rural Development - Single Family Housing Guaranteed Loan Program - *Automated Manual Loss Claim Input Worksheet*, assists lenders to calculate the amount of loss claim to be paid. The entry of data into this sheet automatically completes RD Form 1980-20, "Rural Housing Guarantee Report of Loss"
- Exhibit D, *Table to Determine the Number of Days between Any Two Given Dates, 365-day basis*
- Exhibit E, USDA Rural Development - Single Family Housing Guaranteed Loan Program - *Future Recovery Calculator*, is utilized by lenders to calculate the amount of Future Recovery due to the Agency
- Exhibit F, USDA Rural Development – Single Family Housing Guaranteed Loan Program - *Additional Recovery Calculator (Post Sale)*

Lender/Service Loss Claim Processing Responsibilities

In accordance with the Section 1980.376(a) of RD Instruction 1980-D, the lender/servicer has 30 calendar days from the date of loan liquidation to submit the loss claim to the Agency. The Agency may pay accrued interest on the unpaid principal balance within the limits of the loan guarantee. Further, the Agency may pay additional interest within the limits of the guarantee, to the date the claim is paid if the lender/servicer files the claim timely and accurately. Unless both of these conditions are met, the Agency will curtail the additional interest to the date of loan liquidation. Timely is defined as the submission of a loss claim package to the Agency within 30 calendar days of loan liquidation as evidenced by the postmarked loss claim submission package. Accurately is defined as the submission of all required documents based on the lender/servicer loss claim processing status.

The type of liquidation method used by the lender/servicer defines the date of loan liquidation. For loans liquidated by foreclosure to a third party, REO property sold *within the 6-month marketing period*, or short sale transactions, the liquidation date is as documented by the HUD-1 Settlement Statement or similar closing document. For REO *not sold within the 6-month marketing period*, the date of the claim is the expiration of the 6-month period, or 30 days after, if a sales contract was in place with approval by the Agency prior to the expiration of the 6-month timeframe.

Lender/servicers may submit claim requests prior to the expiration of the six month marketing period and before the REO is sold. Each case will be reviewed by the Agency on its individual merits for payment prior to the expiration of the 6-month marketing period. In cases approved, a liquidation value appraisal will be ordered by Rural Development from which to base the claim payment. The liquidation date in these cases will be the date Rural Development receives the loss claim.

The lender/servicer is allowed up to 6 months from the acquisition date to sell the REO property. The acquisition date is the date the lender/servicer acquires title to the property. Lenders must submit a loss claim within 30 calendar days of REO settlement as evidenced by the settlement statement, Block I of the HUD-1 Settlement Statement, or other documentation showing when funds were authorized for disbursement to the lender. An exception to this timeframe would be when a 30 day extension is granted by the Agency for a property under a sales contract.

For REO that remains unsold, a loss claim must be filed within 30 calendar days of reaching the end of the 6 month marketing period. When submitting an estimated loss claim calculation on unsold REO, the lender/servicer and Agency staff should use the Exhibit B and the estimated sale price, which is based on a third-party liquidation value appraisal obtained by the Agency. This appraised value is multiplied by a cost factor, established by the Department of Veterans Affairs, to estimate REO expenses as noted in the "Background" section of this AN.

Lenders/Servicer Loss Claim Processing Categories

The Agency has three categories of lenders/servicers for claim processing: manual, conditionally approved, and fully approved. Instructions for submitting loss claims for these designations are listed below. The Agency is working through a phased-in approach, with select lender/servicers and intensive monitoring, to enable filing of loss claims via the Internet. Lender/servicers are encouraged to apply to become fully approved. Automated loss claim filing enables enhanced claim processing speed and uniformity. Systematic threshold edits review data entered in all data fields. Claims with data elements outside established parameters are subject to monitoring and manual review.

Lenders/Servicers Designated for Manual Claim Processing

Lenders/Servicers designated for manual processing status will use Exhibit B, Exhibit C, and Exhibit D to help organize and prepare information provided to the Agency in support of loss claims. The Agency should provide the following updated attachments, along with the electronic versions, to the servicing and claims department of lender/servicers.

In addition to the documentation listed in Exhibit B, the lender must submit an original executed Form RD 1980-20.

To be eligible for payment of additional interest, lender/servicer must submit the loss claim package to the Agency within 30 calendar days of loan liquidation as evidenced by the postmarked loss claim submission package. All of the above forms and supporting documentation must be submitted together to the Agency in order to be considered accurate. As previously noted, in accordance with the regulations at Section 1980.376(a) of RD Instruction 1980-D, additional interest will be curtailed to the loan liquidation date unless the claim is submitted promptly (timely) and properly (accurately) and in accordance with the loan guarantee.

Lenders/Servicers Designated for Automated Claim Processing

The Agency completes an approval process involving Guaranteed Loan System (GLS) security clearance (eAuthentication Level 2 account), training and monitoring of claim files during the Conditional Approval stage, before a lender/servicer receives written authority as fully approved for automated claim processing.

(1) Conditionally Approved for Automated Claim Processing

To request a loss claim reimbursement, the conditionally approved automated processing lender/servicer must submit to the Agency, all supporting documentation noted on the Exhibit B excluding the Exhibit C and the original executed Form RD 1980-20 as outlined in Addendum E to their Basic Trading Partner Agreement. When a lender/servicer has put into operation loss claim processing and future recovery processing via the Internet, the manual steps described within this AN will no longer be applicable, unless a manual-processing environment is required.

Conditionally approved automated processing lender/servicers must file the loss claim via the Internet within 30 days of receipt of the liquidation value appraisal amount from the Agency for the claim submission to be considered timely. The supporting documentation listed on the Exhibit B must be postmarked within 30 days of loan liquidation in order for the claim to be considered an accurate submission. As previously noted, additional interest will be curtailed to the date of loan liquidation if the conditionally approved automated processing lender/servicer fails to file the claim timely and accurately.

(2) Fully Approved for Automated Claim Processing

Fully automated lender/servicers must file the loss claim, via the internet, within 30 days of loan liquidation for the claim submission to be considered timely. Lender/servicers that are fully approved for automated claim processing do not submit all supporting documentation with the electronic claim filing as listed in the Exhibit B as outlined in Addendum E of their Basic Trading Partner Agreement. Rather, these institutions submit the supporting documentation requested through the GLS edit code electronic response. Requested edit code documentation must be received by the Agency via fax, e-mail or mail postmarked, within 30 days of loan liquidation. As previously noted, additional interest will be curtailed to the date of loan liquidation if the automated processing lender/servicer fails to file the claim timely and accurately. When a lender/servicer has put into operation loss claim processing and future recovery processing via the internet, the manual steps described within this AN will no longer be applicable unless a manual-processing environment is required.

Since fully approved automated lenders/servicers do not submit all supporting documentation noted in the Exhibit B at the time of claim filing, their claim files are also monitored by the Agency using a post-payment Quality Control (QC) review process. If a claim selected for the quarterly QC review is found to have data integrity issues that caused the claim to be considered inaccurate and/or not timely filed, a request to the lender/servicer will be made for a refund of the additional interest paid.

Agency Staff Manual or Automated Loss Claim Responsibilities

To process a loss claim upon receipt from the lender/servicer, the Agency will ensure that the appropriate forms and supporting documentation are submitted timely and accurately, according to the lender/servicer's processing status (i.e. manual processing or automated processing). If the Agency's review identifies issues or areas of concern or uncertainty, additional documentation may be requested of the lender/servicer beyond what is contained in the Exhibit B. In those cases, the lender/servicer has 15 business days, or agreed, to provide the requested documents to the Agency. If received timely and accurately, the Agency may agree to authorize additional interest through the claim payment date. If the requested material is not submitted within the 15 days and/or is not accurate and complete, the Agency may approve additional interest from the date of loan liquidation to the date of the request for additional documentation. Timely and accurately submitted claims will be paid by the Agency within 60 days of submission by the lender.

The Agency approval official must notify the lender/servicer in writing of their decision on the lender/servicer's loss claim request whether it is filed manually or via automated processing. Any reduction or denial to the lender/servicer's loss claim must be fully documented including an analysis of how the amount of the reduction was determined. A connection must be made between the lender/servicer's action or failure to act and the loss amount on the loan. The amount of loss occasioned by such action will be established. If a lender/servicer's loss claim is denied or reduced, the Agency approval official will notify the lender/servicer of all reasons

for the action and provide the lender/servicer with the opportunity to appeal the decision as set forth in Section 1980.399 of RD Instruction 1980-D and RD Instruction 1900-B.

Agency staff will maintain in the borrower case file, a completed Exhibit C and Form RD 1980-20 (signed by the manual processing lender/servicer and a Rural Development Approving Official), along with all supporting documentation provided by the lender/servicer for 7 years. These files must be labeled, "Loss to the Government," and retained in accordance with RD Instruction 2033-A.

Agency Staff Manual or Automated Loss Claim Responsibilities for Loss Mitigation Incentive

All lender/servicers that have received prior approval from the Agency for either a pre-foreclosure sale or a deed-in-lieu of foreclosure on a Single Family Housing Guaranteed Loan Program loan will receive a one time loss mitigation incentive at the time of loss claim filing. The incentive will be included in the loss claim reimbursement amount received by the lender/servicer. The following loss mitigation incentive amounts will be paid to lender/servicers on closed pre-foreclosure sales and deeds-in-lieu of foreclosure:

Pre-foreclosure Incentive: \$1,000.00

Deed-In-Lieu of Foreclosure Incentive: \$250.00

Agency staff will review the submitted file for evidence that either type of loss mitigation option is allowable as outlined in Exhibit B.

Lender/Servicer Future and/or Additional Recovery Processing Responsibilities

Lenders/servicers will report within 30 days the sale of REO property. Lenders/servicers designated for manual processing will submit the Exhibit D along with the HUD-1 to the Agency for processing. Automated claim processing lender/servicers complete the form via their internet access to the GLS with a copy of the HUD-1 Settlement Statement provided to the Agency.

When the lender/servicer reports an actual sale price that results in future recovery, the lender/servicer may document and deduct certain REO costs that were not considered in the original claim. The combined deduction cannot exceed the difference between the liquidation appraised value (used for the original claim) and the amount for which it was sold (the actual contract sale price). The following items may be deducted from future recovery of sale proceeds:

- Costs of capital improvements that directly resulted in an increased sale price. These additional cost allowances are not for routine repairs made subsequent to the claim settlement or improvements that are already considered in the appraised value used for the claim.
- Additional real estate commission based on the difference between the actual contract sale price and the estimated sale price used for the claim.
- Additional seller concessions that directly resulted in an increased sale price. This additional allowance is only for seller concessions that are above what is typical and customary for the area and was offset by an increased sale price.

Lender/servicers must submit payment for future recovery within 30 days of notification by the Agency. Failure to provide payment to the Agency could result in offset of future loss claim payments.

Additional recovery is defined as, but not limited to: collection of a deficiency judgment; reimbursement of insurance premiums or property taxes; or, hazard insurance claim collections. Additional recovery must be reported to the Agency within 30 days of collection of funds. A worksheet labeled Exhibit E is utilized by manual processing lender/servicers to report this type of recovery to the Agency. Automated claim processing lender/servicers complete the form via their Internet access to the GLS. Lender/servicers must submit any payment for Additional Recovery within 30 days of notification by the Agency.

Agency Staff Future and/or Additional Recovery Processing Responsibilities

Upon receipt of the future recovery package, the Agency staff will input and /or review the information in GLS for claims based upon an estimated net recovery, under the Loss Claim Administration menu, Add Recovery Calculator.

The Agency will approve and notify the Lender/Servicer of any future/additional recovery due to Rural Development. When the payment is received, the Agency will deposit and process the collection in GLS.

The following procedures supplement the regulation presently in place:

1. When a claim based upon a liquidation value is paid, advise the lender/servicer, or payee, as appropriate, of the following: (a) the liquidation appraised value used to calculate the claim; (b) that the lender must report the sale of REO within 30 days of the settlement date; (c) that future recovery may be due if the actual sale price exceeds the liquidation appraised value; (d) when and how to report the sale of REO and future recovery of sale proceeds; and, (e) the consequences of failure to report future recoveries (additional monitoring and possible termination of lender eligibility).
2. Through the use of GLSFH18, "Future Recovery Report", flag claims that were paid based on estimated sale proceeds and contact the lender/servicer 90 days later to inquire about the REO status if the actual sale information has not been received. Request the lender/servicer to submit a HUD-1, Settlement Statement, or similar document as verification of the sale amount. Continual follow-up every 90 days should persist until the sale information is received.
3. When a lender/servicer reports the REO as sold, the Agency will update tracking records in GLS, under the *Loss Claim Administration* menu, *Loss Claim Update*, *Add Recovery Calculator*. This process is **applicable to all claims** paid based upon a liquidation value appraisal, regardless if future recovery is due.
4. For Nationally-approved lenders/servicers, report non-compliance with requests for sale information or payment of future recovery to the National Office, SFHGLD.
5. Review compliance with future recovery provisions in conjunction with lender monitoring reviews under RD Instruction 1980-D, Section 1980.309(g). The National Office is responsible for Nationally-approved lender/servicer monitoring. State Offices are responsible for State-approved lender/servicer monitoring.

The following is attached to assist in submitting loss claims, future/additional recovery:

- Exhibit A, Single Family Housing Guaranteed Loan Program - *Loss Claim, Future, and Additional Recovery User Guide, Version 4.1 (User Guide)*.
- Exhibit B, USDA Rural Development - Single Family Housing Guaranteed Loan Program - *Loss Claim Checklist*.
- Exhibit C, USDA Rural Development - Single Family Housing Guaranteed Loan Program - *Automated Manual Loss Claim Input*.
- Exhibit D, *Table to Determine the Number of Days between Any Two Given Dates, 365-day basis*
- Exhibit E, USDA Rural Development - Single Family Housing Guaranteed Loan Program - *Future Recovery Calculator*.
- Exhibit F, USDA Rural Development – Single Family Housing Guaranteed Loan Program - *Additional Recovery Calculator (Post Sale)*

The above can also be requested from Rural Development state offices via Sharepoint or by contacting Michelle Corridon at michelle.corridon@wdc.usda.gov, or Susanne Wilson at susanne.wilson@wdc.usda.gov.

Lender/servicer loss claim training can be found at [USDA LINC Training and Resource](#) library.

Questions regarding this AN can be directed to Michelle Corridon at (804) 287-1595, or Susanne Wilson at (202) 720-9705, in the Single Family Housing Guaranteed Loan Division.

Attachments